

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 585 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NARESHBHAI ALIAS MANOJ

NARANBHAI KANOJIYA

Versus

COMMISSIONER OF POLICE

Appearance:

MR YF MEHTA for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 26th October, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of

the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The order of detention is accompanied by the grounds of detention. It refers to two offences registered against the petitioner in the month of July 1998 and September 1998 for violation of the prohibition law and the statements given by the witnesses whose identity has been withheld. It is alleged that the petitioner is a 'bootlegger' within the meaning of section 2 (b) of the Act, and that his activities are prejudicial to the maintenance of public order.

The order of detention is challenged on the ground that the subjective satisfaction recorded by the Detaining Authority is vitiated for non-application of mind. It is contended that though the Detaining Authority was alive to the other remedies available to him, he has not considered whether such less drastic remedy would be adequate or not. Further, the Detaining Authority has failed to verify the credibility of the material relied upon by him. The subjective satisfaction is, therefore, based on the material, the credibility of which is doubtful.

I have perused the grounds of detention and the supporting material. Upon perusal of the grounds of detention, it appears that the Detaining Authority was alive to the other remedies available to the authority under section 56 of the Bombay Police Act, and section 93 of the Bombay Prohibition Act. Having considered the availability of these remedies, the Detaining Authority has observed that it would not be proper to resort to either of the said remedies. It is adequacy of the remedy available which should be the matter of consideration by the Detaining Authority and not the propriety. Thus, the Detaining Authority has failed to examine whether any of the less drastic remedies would have served the purpose rather than resorting to the drastic action of preventive detention under the Act. Further, though the Detaining Authority has examined whether the fear of retaliation expressed by the witnesses was genuine or not and whether the Detaining Authority was required to claim privilege under section 9 (2) of the Act or not, he has failed to examine whether the statements of the witnesses were reliable or not. Such exercise is not manifest from the order of detention. Besides, on perusal of the statements it appears that for the incidents which occurred on 5th September, 1998 and 13th September, 1998, the witnesses have given statements to the police on 24th October, 1998

and 25th October, 1998 respectively. The verification has been recorded by the Detaining Authority on 26th October, 1998, the date on which the impugned order was made. The proximity of these dates and the absence of contemporaneous evidence suggest that neither the Detaining Authority nor any of his subordinate officers had examined the credibility of the witnesses or the genuineness of the statements given by them. It, therefore, appears that the Detaining Authority has relied upon the material placed before it without examining the reliability of such material. The subjective satisfaction recorded on such material is, therefore, vitiated. Consequently, the order of detention also would be vitiated.

For the aforesaid reasons, the petition is allowed. The impugned order dated 26th October, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

.....

JOSHI*